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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND * CRIMINAL * PART 5

THE PEOPLE OF THE STATE OF NEW YORK

-against-

INDICT: 0270-09

ANTHONY RUCANO,

Defendant.

CALENDAR CALL

County Courthouse
Staten Island, N.Y.
June 21, 2010

B E F O R E:

HON. STEPHEN J. ROONEY,
Justice, Supreme Court

A P P E A R A N C E S:

DANIEL M. DONOVAN, JR., ESQ.
District Attorney - Richmond County
BY: ANTHONY KATCHEN, ESQ.
and RAJ RAJASWARI, ESQ.
Assistants District Attorney
For the People

EUGENE LAMB, ESQ.
Attorney for the Defendant,
Seven Freen Street
Staten Island, N.Y.

John V. Stewart
Sr. Court Reporter

Proceedings

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2 THE CLERK: Calendar one, Anthony Rucano.
3 Indictment 270 of 20009. Appearances?

4 MR. KATCHEN: Anthony Katchen and Raj
5 Rajaswari for the People.

6 MR. LAMB: Eugene Lamb for the defendant.

7 THE COURT: We had discussed this matter
8 earlier. Do you want to make a record as to the
9 computer issue?

10 MR. KATCHEN: Your Honor, even before that, I
11 did turn over some additional Rosario today. I'm
12 handing to the Court a sheet which, I guess,
13 memorializes all the discovery turned over thus
14 far and will be turned over as of tonight.

15 With respect to the hard drives and the
16 Computer Crime Squad, I was in touch with a
17 detective this morning. He has completed two of
18 the three hard drives and will be finishing a
19 third today. I'll have that picked up by my
20 office and make it available to defense by having
21 it available at Criminal Court tomorrow morning.

22 THE COURT: Okay.

23 MR. LAMB: Judge, as I indicated, this
24 defendant has an old computer he can't go over
25 this stuff with. He doesn't know exactly the

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format it's coming back in but it will not have icons to go to to pull up all of the relevant information. He would probably have to go through all of the hard drives in order to recover what he believes are the relevant parts to this case. I'm asking for a short period of time to give him an opportunity to do that.

THE COURT: Give me a trial date.

MR. LAMB: Judge, we could be ready by July 7th.

My only further request of the Court, and I apologize for being difficult, but my further request is because the 11th is my wedding anniversary and I'm planning to go away for a short vacation, if I could have Monday the 12th off?

THE COURT: That's alright with me. Does it work for the D.A.?

MR. KATCHEN: That's fine.

THE COURT: Fine,

THE COURT: If you need to advance the case, let me know.

Another thing I'd like to address, Mr. Katchen. I have voice mails the People sent me in

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2 conjunction with the Molineaux application. But
3 there is no referencing context. I don't know
4 what phone they were made to or the date they were
5 made or what time. All I have is the calls. I
6 need some kind of context so I can decide if it's
7 admissible.

8 MR. KATCHEN: I can clarify that for the
9 Court. Would you prefer that in writing?

10 THE COURT: Yes, put it in writing. I have
11 the voice mails and so does the defense.

12 MR. LAMB: No.

13 THE COURT: You don't? It's on the list.

14 MR. KATCHEN: I gave you copies, the CDs.

15 MR. LAMB: I'm sorry, I do have that, yes.

16 THE COURT: Give me some kind of context and
17 we'll get on the record with that on July 7.

18 MR. LAMB: I would ask for a copy of whatever
19 they give you.

20 MR. KATCHEN: Absolutely.

21 MR. LAMB: The defendant also indicated to me
22 his smart phones were taken. There are telephone
23 numbers of at least two potential witnesses on the
24 smart phones.

25 THE COURT: What are you saying? He doesn't

Proceedings

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2 know the phone numbers?

3 THE DEFENDANT: One just moved to Florida and
4 I only have his cell phone number. I don't have
5 it backed up anywhere else because they're backed
6 up on my computers.

7 I also don't have access to my work phone,
8 which is only used for work and is impeding --

9 THE COURT: I can't help you with material
10 seized pursuant to a search warrant. That's not
11 in front of me.

12 In terms of the trial, if he has names of
13 potential witnesses and their phone numbers, have
14 the D.A. get those back to you.

15 Does that make sense do you?

16 MR. KATCHEN: Perfect sense.

17 MR. LAMB: The defendant has continually
18 indicated to me here he wishes to make a statement
19 to the Court.

20 THE COURT: Why?

21 THE DEFENDANT: It's important, Judge.

22 MR. LAMB: I don't know what he wants to
23 say --

24 THE COURT: You really ought to run it by
25 your lawyer. That can be very dangerous.

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2 THE DEFENDANT: I understand. I've
3 particularly gone over what I want to say.

4 THE COURT: All right, I'll hear you if you
5 want to make a statement.

6 THE DEFENDANT: Please forgive my lack of
7 knowledge of the court systems. I'm trying to
8 explain my case in layman's terms.

9 As I tried to explain six weeks ago when the
10 District Attorney served the search warrant, my
11 lawyer told me at that time that I was going to be
12 arrested and prosecuted.

13 Six weeks have gone by. I have not been
14 charged with any other crime. The plaintiff
15 indicates, the person who made these accusations,
16 if they were made at the origination of the case,
17 why on the eve of trial is this being brought up?
18 That's the first thing.

19 The second thing is the plaintiff was living
20 with me and used all my computers, came to me to
21 all my job sites, used my computers at jobs, had
22 access to my E-mail and passwords, everything
23 concerning this investigation. I don't understand
24 why after all this time this is being brought up
25 now.

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2 I asked my attorney if there were legal steps
3 I could take to protest this and ask them how long
4 they can confiscate my equipment. He knew of no
5 legal recourse I could take at this time and
6 doesn't know how long the District Attorney can
7 hold my equipment without charging me.

8 I assume there is a statute governing the
9 amount of time they can have my equipment without
10 charging me. The accusation I understand is only
11 a minor charge compared to the case I'm being
12 prosecuted for now and I feel there was some kind
13 of misconduct there and I'm investigating that
14 with another attorney right now.

15 I would like to ask the Court to ask the
16 District Attorney when this supposed E-mail
17 information was brought to his attention and if it
18 was brought to his attention a long time ago, why
19 do they wait to the eve of trial to produce it
20 now.

21 My attorney informed me he provided hard
22 drives for the District Attorney to copy my data
23 and return it to me following their investigation.
24 I tried to explain to my attorney the problem I'm
25 having.

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2 This is state of the art equipment. I don't
3 know if I have software on a used computer to
4 access this. I'm also sharing a home computer
5 with my three children and I don't want to be
6 prejudiced but I have to give them time on that,
7 as well.

8 I'm without phone numbers and personal hours
9 and hours, tens of hours of research was expended
10 on my defense, which is going to be an affirmative
11 defense, the fact that I was abused, physically,
12 mentally and emotionally by the plaintiff way
13 before any of the charges she brought up. I
14 haven't been able to take that information, go to
15 private attorneys, go to investigators.

16 I have family members that are helping me
17 research this case. For six weeks I'm unable to
18 proceed any further with my defense and I would
19 ask the Court take that into consideration. I
20 have a common law wife and four children that I
21 still support. I was supporting them when I lived
22 with Catherine and I support them to this day.
23 They moved back with me and I support them on a
24 daily basis.

25 I have witnesses I haven't been able to

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2 contact. I spent months preparing for this and
3 I've downloaded research on domestic violence
4 situations.

5 There's also issues I asked my attorney
6 concerning my indictment.

7 On September 28th, I was arrested and charged
8 with one crime on September 28. On October 6,
9 according to the SVU reports, all the cases were
10 closed on October 6th and there was only one
11 charge against me.

12 Meanwhile, Dennis O'Sullivan, my attorney of
13 record, received from the District Attorney
14 information that I was to appear on October 14 for
15 an indictment when I never waived my right for an
16 indictment. I informed my attorney of record at
17 the time that I wanted to be produced at the Grand
18 Jury. He has no record of receiving written
19 notice from the District Attorney that the Grand
20 Jury was going to convene and was unable to give
21 me the opportunity to come in to testify before
22 them.

23 The reason I'm stating this is because --
24 excuse me -- because I believe that if the Grand
25 Jury would have heard the testimony of myself, of

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2 my couple's counselor, of witnesses I had to
3 attest to the fact that we were seeking help from
4 a couple's counselor on a regular basis for a
5 month prior to this, nine days before I was
6 arrested I took the plaintiff to Cold Haven
7 Resorts, a romantic weekend get-away where I have
8 pictures of us together. Two days later we were
9 at the couple's counselor and I told the couple's
10 counselor I wanted to break up. I was afraid the
11 violence between us was growing too strong and I
12 asked the counselor to speak to Catherine alone.

13 When I came back into the couples session the
14 week before I was arrested, the couple's counselor
15 told me that Catherine agreed to stay with me and
16 wipe the slate clean and leave all our problems
17 behind us and move forward. Six days later we had
18 an argument the night before the next counseling
19 session, also the night before I was arrested.

20 I told Catherine I didn't believe we made any
21 progress and I told her I was going to revisit the
22 issue of breaking up in the counseling session the
23 next day, including paying for her moving
24 expenses, travel expenses, renting a truck,
25 helping her move, everything. Because I cared

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2 about the woman a lot and I wasn't looking to
3 cause any harm between us.

4 At that time we had already caused each other
5 enough harm physically, mentally and emotionally.

6 That day I was supposed to go to couples
7 counseling. She woke up, waited for me to get
8 dressed, waited for me to take her to the ferry.
9 I dropped her off at the ferry at 7:00 a.m.. And
10 two and a half hours later she calls the police
11 and has me arrested for these crimes.

12 I'm saying there is a lot going on here that
13 was enough to convince the arraigning judge at the
14 time of the arraignment. The D.A. asked for
15 \$50,000 bail. When the judge heard about the
16 circumstances involving this case, he gave me
17 \$5,000 bail and admitted on the record there are
18 other circumstances involved in this case,
19 mitigating circumstances, that led to his decision
20 to lower my bail to \$5,000.

21 I'm working full-time for three and a half
22 years for New York City Transit. I'm gainfully
23 employed. I've been to every court session. I
24 only ask your Honor that they provide me with time
25 to prepare for my case, as this is something that

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2 will affect my children and everybody else around
3 me.

4 I believe I'm presumed innocent and should be
5 given the benefit of the doubt to be able to have
6 time to complete preparing for this case since
7 it's a major case that could affect my life.

8 THE COURT: We agreed on a date two and a
9 half weeks from now. Hopefully, that's good
10 enough. I told the lawyers if they have a reason
11 to advance the case, we'll do it.

12 MR. LAMB: I'm stating on the record now that
13 if the hard drives are available for me to pick up
14 tomorrow morning, I'm asking the defendant to be
15 at my office at 1:00 o'clock tomorrow afternoon so
16 he can start working on them.

17 THE COURT: Great. It seems to me two and a
18 half weeks should be sufficient. We agreed on July
19 7.

20 As I say, if you have to advance this, let me
21 know and we'll do it.

22 THE DEFENDANT: I would like to say one more
23 thing. I hate to take your time. Every year in
24 the first two weeks of July me, my common law wife
25 and children -- I take my vacation time at that

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2 time, as well. I am scheduled for my vacation
3 between July 3rd and July 15.

4 So instead of wasting the Court's time on the
5 12th, I would ask, with the D.A.'s and my lawyer's
6 permission and your approval, that we put it off
7 to the week of July 19th. My vacation ends on the
8 16th.

9 THE COURT: I'm leaving it on for the 7th.
10 The lawyers agreed on that and that's all I
11 require.

12 I'm sorry for any inconvenience, but that's
13 the way the criminal justice system works. I need
14 a trial and we have them backed up.

15 In terms of what you said, to the extent any
16 of this is admissible, you can put it into
17 evidence.

18 In terms of your computer, I can't help you
19 other than insist any of materials you need for
20 this trial be given to you. And we're in the
21 process of accomplishing that. I can't order them
22 to give you back anything seized pursuant to the
23 search warrant. I never saw the warrant and it's
24 not before me.

25 THE DEFENDANT: I would like a copy of the

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1 warrant. I asked my lawyer for that and they said
2 I'm not entitled to it. My equipment is seized
3 for six weeks and no action has been taken.
4

5 THE COURT: They don't, necessarily, have a
6 time limit.

7 THE DEFENDANT: Are you saying they can keep
8 it for three years?

9 THE COURT: I'm told the police forensics
10 unit is going through the computer files. And if
11 anything comes of that, I have no idea. I haven't
12 seen the warrant.

13 If you can get Mr. Lamb a copy of the
14 warrant, do it. I don't know if it has anything
15 to do with this case or not.

16 THE DEFENDANT: It relates to the
17 investigation of this case.

18 THE COURT: My understanding is it has to do
19 with, possibly, new charges. Am I right?

20 MR. KATCHEN: That's correct.

21 MR. LAMB: What was represented to me is the
22 possibility this may lead to an arrest for the
23 felony charge of computer trespassing, I believe
24 it is.

25 THE COURT: I suppose that's possible. I

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1 don't know. That's why they seized it and why
2 they're going through it.

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4 MR. LAMB: That's my understanding. As far
5 as I know, they have a statute of limitations of
6 time with which to deal with this, other than
7 perhaps some kind of a civil action at sometime
8 down the road. And that's my understanding of the
9 limitations of our rights with regard to the
10 criminal charge.

11 THE COURT: As I said before, you're a very
12 experienced lawyer. I leave you to your own
13 devices in that regard. It's not for me to
14 speculate as to what, if anything, will come out
15 of this. I just want to make sure this trial gets
16 off the ground with both sides having the material
17 they need. Hopefully we accomplish that before
18 the 7th.

19 I'm putting this on for the 7th for trial.
20 Give me the material regarding these voice mails
21 and if something comes up and you need to advance
22 it, give me a phone call and we'll advance it.
23 Okay?

24 MR. KATCHEN: Thank you.

25 THE DEFENDANT: Thank you.

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1 THE COURT: July 7.

2 THE CLERK: Do the People move to extend the
3 order of protection? It expires June 30.

4 MR. KATCHEN: So moved.

5 THE COURT: I'll extend the temporary order
6 of protection.

7 THE CLERK: Have a seat. Don't leave.
8 You're getting a copy of your order of protection.
9 July 7th.

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13 Certified to be a true and
14 accurate transcription of the
15 minutes taken in the above-
captioned matter.

16 
17 John V. Stewart
18 Official Court Reporter
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